

## **DOMESTIC RELATIONS COMMITTEE**

Meeting Minutes – April 16, 2004

### **PRESENT:**

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### **CO-CHAIRS:**

Hon. Mark Anderson, Co-Chair  
Hon. Karen Johnson, Co-Chair

### **MEMBERS:**

- Hon. Karen Adam
- Hon. David Bradley
- Hon. Bill Brotherton
- Sidney Buckman by Diana Hegyi
- Kat Cooper (designee Judy Bushong)
- Frank Costanzo
- William Fabricius
- Hon. Beverly Frame
- Nancy Gray
- Bill Hart
- Terrill J. Haugen
- Ella Maley
- Hon. Dale Nielson
- David Norton
- Steve Phinney
- Karen Kretschman
- Ellen Seaborne
- Kelly Spence
- Judy Walruff
- Steve Wolfson
- Debbora Woods-Schmitt
- Brian Yee
- Jeff Zimmerman

### **STAFF:**

Sharon Dautrich  
Isabel Gillett  
Barbara Guenther  
Marianne Hardy  
Megan Hunter

House of Representatives  
Administrative Office of the Courts  
Senate  
House of Representatives  
Administrative Office of the Courts

Representative Johnson called the meeting to order at 10:12 a.m. without a quorum present.

#### **APPROVAL OF MINUTES**

Due to the lack of a quorum, approval of the minutes was postponed until a quorum could be reached.

#### **ANNOUNCEMENTS**

Members introduced themselves.

#### **Legislative Update**

Sharon Dautrich, House Intern, reviewed domestic relations-related bills.

#### **HB2348**

Representative Johnson explained that the original bill (HB2348) would allow a judge to consider prior criminal conviction of one spouse against another spouse or their child when considering property division and spousal maintenance. SB1308, the custody evaluator training bill, died in House Human Services but was amended onto HB2348 in Senate Family Services. The bill places domestic violence and child abuse training requirements on custody evaluators.

Brian Yee commented that domestic violence is shameful, awful and wrong. The bill exempts physicians from the training; they have a minute percentage of training compared to mental health professionals (psychologists). Psychologists are the most aggressively regulated profession. The Psychology Board was renewed for 10 years – this is because they are the most vocal and conscientious board in terms of consumer protectionism, not only for improprieties, but the appearance of improprieties. He commented that the energy of the advocacy group behind this bill is recognized but misplaced.

He would like the Legislature to understand the implications of legislating this profession, especially based on pushes from advocacy groups. Courts need help for custody evaluations. The legislators should understand whether they want the evaluators to be trained by biased groups. To make this issue moot, the psychology board has approved 4 hours of domestic violence and child abuse training as a condition of a psychologist's licensure. The sentiment is well-taken; however, this is a solution that does nothing constructive to the overall problem.

Jeff Zimmerman commented that it would be highly inappropriate to have advocacy groups to do any kind of training. The judges should have the choice to determine who trains them.

Bill Hart commented that the Coalition Against Domestic Violence does not want to impugn the professionals (psychologists) in any way. However, they have found out some problems related to custody evaluators. They believe that problems are in the family court – that domestic violence offenders are being granted custody. In rural areas, evaluators are not psychologists and training is not necessarily grounded in best practices.

Judy Walruff commented that training is important, but she is concerned that no definition is listed in legislation. She advocates for an organization that advocates for children. Her bottom line problem with this bill is definitional problems with this section. She agrees that there are

certifying groups that set regulation and provide training across the professions to make sure that those people who are doing evaluations meet the kind of criteria and that's where some attention needs to be paid. Any kind of advocacy group can step in and do the training. She shares concerns about the physician exemption.

On Senator Anderson's request, Brian Yee explained that only two or three psychiatrists do custody evaluations.

Senator Anderson commented that this discussion has been very helpful and valuable. Representative Johnson explained that the bill is done in the Senate and will now come back to the House. She, as sponsor, must concur or refuse to concur with the Senate amendments. Because so many problems surrounding the bill, she will refuse to concur, then it will go to conference committee. She invited Committee members to contact their legislators.

Diana Hegyi explained that her staff at Conciliation Services in Maricopa County attend approximately 14 hours of training on domestic violence each year. She has scheduled two trainings through the Coalition Against Domestic Violence, but the training was not advanced enough for the evaluators. She encouraged the Coalition to develop advanced training.

Nancy Gray commented that all of us are on the same page in terms of protecting children and domestic violence victims. She wants the Committee to know that custody evaluations are the exception, not the norm.

Karen Adam expressed her concerns as a judicial officer. She has to consider about 30 factors in a custody decision. The proposed language in new section C is in direct conflict with existing language in statute. New section C requires only an allegation of domestic violence, not proof that domestic violence has been committed as statute requires. This proposal would require judges to determine between two competing statutes thereby making it impossible for judges to determine.

Bill Hart commented that the discussion has been very valuable and the Coalition's training department would be more than happy to revise their curriculum. The Coalition is not seeking to disparage the majority of custody evaluators who do a good job, they are just trying to address those who are not. Parents in this situation do not have legal recourse.

Members discussed the role of this Committee as it relates to the Legislature. Specifically, are there any problems with the way we are connecting or not connecting with them. Members agreed to look into the following:

1. Send an information letter to legislators.
2. Have Megan notify legislators on a monthly basis of this Committee's activities and ask them for input.
3. Members should become more involved at the Legislature during session.
4. Senate Family Services and House Human Services Committee members should be apprised of the activities of this Committee. When new chairs are appointed to those committees, they should be invited to speak at a DRC meeting

5. Megan should compile a list of bills at the beginning of session, contact bill sponsors and ask them to address the proposal at a DRC meeting. This Committee would then come up with a recommendation to vote it up or down.
6. Megan should develop a presentation for legislators at their pre-session training.

A quorum was reached at 10:56 a.m.

**MOTION: David Norton made a motion to approve the February minutes with one amendment to correct a spelling error. Nancy Gray seconded the motion. Approved unanimously.**

**MOTION: David Norton made a motion to approve the March minutes as submitted. Nancy Gray seconded the motion. Approved unanimously.**

#### **CALL TO THE PUBLIC**

Julianna Koob – Arizona Coalition Against Domestic Violence. Ms. Koob acknowledged that the Coalition is on the same page and that is our common interest to protect victims of domestic violence. She wanted to clarify that from perspective of domestic violence, this is a child safety and consumer protection issue. People cannot pursue litigation or challenge litigation (those who are unrepresented). The Coalition would like to have this Committee develop a curriculum committee to develop the custody evaluator training curriculum. The Coalition is trying to get empirical research and what they are trying to get at is getting the best data used across the country. They are excited about taking this committee's expertise and knowledge to the Legislature.

Dave Norton asked Julie how many cases generated the custody evaluator issue? Julie responded that a majority of litigants are unrepresented and that at least 50 families are interested in this legislation, but she does not know how many total cases.

Brian Yee commented that the 50 families are people who found their way to the Coalition, but there is no way to validate their complaints. We cannot assume that the court erred in those cases unless each case is reviewed.

Karen Adam referred the Committee to the Family Builders statues which are incredibly detailed and provide useful definitions.

Dianne Fitzgerald-Verbonitz – Director of Arizona Psychological Association. Dianne explained that the exemption language covers anyone who holds a medical license including psychiatrists. She assumes the reason they were exempted is that they were able to convince the Coalition. She would be very interested in knowing how the psychiatrists satisfied the training requirements and would like to compare it to the psychologists training. The Board of Psychology requires four hours of domestic violence training for APA credentialing. The Board takes training very seriously.

Julia Purington – Parent. Julia explained that there is no one to protect married persons. Her ex-husband had a credit card which he had before meeting her – she had no knowledge of the

account until the divorce was in process. After the divorce and she found out about the debt, the bank would not talk to her. She had no right to information, yet she could still be sued for the debt because of the community property status of Arizona. The judge allowed the husband to file bankruptcy and urged her to do the same. It devastated her credit and will limit her financial options for years to come. She's concluded that she pointed out the injustice to the wrong people. She suggested that each partner should be given the right to access and control all accounts under community property or change the definition of community property so it does not become community liability.

Representative Johnson indicated she would like the Committee to look at this area. Judge Nielson commented that he understands the situation. People are actually entitled to that information but they do not know they could get at it. He understands and has seen this happen before. Not sure if a statute is in order, but a judge should require that information to be made available.

#### **BREAK/LUNCH**

The Committee dismissed for lunch at 12:00. The meeting reconvened at 12:30 p.m.

#### **WORKGROUP REPORTS**

##### **Education/Prevention**

The group met with Dr. Sandler and discussed Hawaii's children's education programs and other programs from around the country. They reached consensus that the Hawaii program probably would not work in Arizona. Instead of mandating a program for every child, a referral program to a pilot project is being discussed. ASU will develop the pilot project proposal and with the participation of this Committee, they will seek private grant funding instead of seeking funding from the Legislature or courts. The group would like to get the Committee's blessing to let the group develop and implement a pilot project with a built-in evaluation program. If it results in the success they anticipate, they would hope to implement the program statewide.

##### **Court Procedures**

The workgroup has agreed to address three areas:

1. Family Bench. Commissioner Adam report on Pima County's recent assignment changes. Judge Leonardo advised the trial court that the juvenile rotation would be a 5-year assignment. He spoke with a commission member about important questions regarding family law for candidates. In the past, the candidates are always asked if they are willing to serve on the family bench and everyone always says yes. New questions may be asked concerning therapeutic jurisprudence. The newest appointed judge is a former juvenile court judge.

Judge Campoy from Pima County convinced one of the commission members to tour the juvenile court and also wrote an article about juvenile court and therapeutic jurisprudence.

The workgroup will discuss applying the same model in Maricopa County and hopefully have some impact on the composition of the bench.

2. DR Rules Committee. Judge Nielson and Brian Yee are members of a committee that is reviewing all rules that apply to domestic relations cases. One of the functions is to update this Committee as to what is being proposed there and revisions that are upcoming.
3. Domestic Violence. The group will work on proposing to the AOC the possibility of developing guidelines for dealing with domestic violence cases in anticipation of taking the burden off the Legislature in this problematic, multi-faceted problem. They will look at statistics to look at concerns that have been put forth. Diana Hegyi, Superior Court in Maricopa County, has analyzed some of these complaints and will be invited to speak to the full Committee at the next meeting. It is extremely important to have reliable statistics. The workgroup will be brainstorming to come up with a procedure for the AOC to review and consider. There is a lot of fog in presentations and statistics presented to this Committee. The Legislature and the Committee need valid statistics to determine if problems exist and if so, fix them.

#### **SUBSTANTIVE LAW**

Jeff Zimmerman reported that the workgroup will work on the following topics:

1. Child Custody Reform. The group will continue working on child custody reform that is designed to promote continuing the parent/child relationship. This year they will look into using a presumption of joint custody in the preliminary injunction which would continue until the court makes another order.
2. Paternity. The group will discuss the presumption of custody that currently exists in paternity cases which seems to enable the parent who has physical custody (not legally established) to manipulate and control the issues.
3. Credit issue. The group will discuss credit issues associated with dissolution.
4. IFC Funding. The group will continue to discuss IFC funding issues.

#### **INTEGRATED FAMILY COURT**

Karen Kretschman reported on the IFC Pilot Projects, as follows:

1. Pinal County - Nothing new to report.
2. Coconino County – A volunteer guardian ad litem program has been implemented within the IFC to help court users. They started with 33 volunteer lawyers of which 23 showed up for initial training. So far, they have been able to do it with no money.
3. Maricopa County – Nothing new to report.

Karen reported that she continues to look for funding within the AOC, but she cannot promise anything.

Ellen Seaborne reported that she worked with Celia Barotz, Coconino County ADR Director, on language to go take to the Board of Supervisors to increase filing fees in an attempt to raise money for the IFC. They will raise the response fee to match the filing fee and implement a subsequent filing fee which will hopefully bring in an additional \$60,000-\$80,000 per year.

#### **OTHER**

Ellen Seaborne recommended that the Committee develop a timeline for developing proposals to ensure they will be complete in time for legislative session. Megan will include these in our packets next month.

#### **CALL TO THE PUBLIC**

Danny Cartagena – Parent. Danny reviewed his paternity proposal regarding paternity.

Judge Nielson indicated that the DR Rules Committee has discussed this difficult substantive issue. They are talking about setting time limits and making sure the courts see these people in a timely way (within 60 days). At least there would be a rule to address getting into the courts earlier.

#### **NEXT MEETING**

The next meeting will be held on May 21, 2004, 10:00 am – 2:00 pm at the Arizona State Courts Building, 1501 W. Washington, Conference Room 119.

#### **ADJOURNMENT**

The meeting was adjourned at 2:00 p.m.